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No. 79-1636

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

WILLIAM W. WINPISINGER, *et al.*,
Petitioners,

v.

JACK WATSON, *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITIONERS' REPLY TO BRIEFS IN OPPOSITION

JOSEPH L. RAUH, JR.
JOHN SILARD
RAUH, SILARD & LICHTMAN
1001 Connecticut Avenue, N.W.
Suite 410
Washington, D.C. 20036
202/331-1795

WILLIAM A. DOBROVIR
ERWIN CHEMERINSKY
2005 L Street, N.W.
Washington, D.C. 20036
202/785-8919

Attorneys for Petitioners

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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1. Respondents assert [1] that petitioners did not satisfy the concrete injury-in-fact requirement for Article III standing, and that the Court of Appeals so held in its off-hand reference to the district court's opinion. If indeed the Court of Appeals really intended so to hold—which we doubt (*compare* Pet. at 11 with Pet. App. 10a)—it wholly departed from the long line of decisions of this Court recognizing as concrete various kinds of injury to First Amendment and Equal Protection rights

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[1] Federal Respondents Opp. at 4; Carter-Mondale Opp. at 6.

related to the political process—dilution of the vote, *Reynolds* v. *Sims*, 377 U.S. 533 (1964), *Baker* v. *Carr*, 369 U.S. 186 (1962); injury to the ability to make political contributions and make them effectively, *Buckley* v. *Valeo*, 424 U.S. 1 (1976); injury to the ability to associate effectively and to persuade others to associate with you for political purposes, *Illinois State Board of Elections* v. *Socialist Workers Party*, —— U.S. ——, 99 S.Ct. 983 (1979); *Williams* v. *Rhodes*, 393 U.S. 23 (1968); injury to the opportunity to run for office,[2] *Bullock* v. *Carter*, 405 U.S. 134 (1972),[3] *Turner* v. *Fouche*, 396 U.S. 346 (1970).

When, as here, petitioners' votes are being diluted by votes purchased by the incumbent's use of federal grant funds; where their contributions to their candidate are lost in a sea of federal dollars used to pay substantial expenses of the incumbent's campaign; where the delegate-candidate petitioners must face opponents whose campaigns are aided by federal funds, and where the ears of political leaders and federal employees are closed to petitioners' efforts to persuade because of the bribe of federal grants and the threat of dismissal from federal employment—there is concrete injury to personal political rights in violation of the First Amendment and the Equal Protection Clause. To say otherwise would be to argue that everything in the political process is protected except

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[2] Two of the petitioners are candidates for the office of National Convention delegate.

[3] The Carter-Mondale Committee (Opp. at 3) implies that Senator Kennedy or his campaign committee would have greater rights than petitioners. But, as we noted in the petition and as stated in *Bullock*, it is petitioners as voters, contributors, participants and supporters of the candidate whose rights are constitutionally protected rather than the candidate's rights.

the right to a fair election against the incumbent—quite likely the most important right of all.[4]

2. The primary point made by the Government and the Carter-Mondale Committee is that petitioners are wrong when they contend that the lower court "imposed a guaranteed success test on standing to sue" and held that plaintiffs "must show that their preferred candidate would win nomination *but for* defendants' illegal conduct" (Pet. 15-16).[5] To prove their point, both quote the sentence in the opinion below that "the endless number of diverse factors potentially contributing to the outcome of state presidential primary elections, caucuses and conventions forecloses any reliable conclusion that voter support of a candidate is 'fairly traceable' to any particular event." But this is just what we said. If petitioners have to isolate the damage done, through the dilution of their votes and campaign participation by the unconstitutional use of federal funds and federal power, from all other factors affecting the voters, they are in fact having to prove just what we said in the petition—that but for the unconstitutional efforts of the highest officials of the federal government voter support would have gone to petitioners' candidate. Standing, we submit, requires no such showing. Our injury is to our efforts—as respondents and the Court of Appeals all concede, it is the "dilution of [petitioners'] efforts on Senator Kennedy's

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[4] The Carter-Mondale Committee (Opp. at 5) seeks to add a new test to rights assertable in federal court—namely, that the injury to those rights be "quantifiable." But neither the cases cited nor any other case to our knowledge makes any such requirement. *See* to the contrary United States v. SCRAP, 412 U.S. 669 (1973). Substantial injury is the requirement, and that has certainly been alleged.

[5] Fed. Respondents' Opp. at 4-6; Carter-Mondale Opp. at 6-8.

behalf."[6] Indeed the complaint shows just what the federal respondents would concede as establishing standing—"appreciable impact on petitioners' *efforts* on behalf of Senator Kennedy,"[7] *see* p. 2, *supra*.

3. Respondents echo the Court of Appeals' asserted fear that it would not be "prudent" to order an end to this masisve abuse of patronage.[8] They try to distinguish *Elrod* v. *Burns*, 427 U.S. 347 (1976), *Branti* v. *Finkel*, —— U.S. —— (1980), and *Illinois State Employees Union* v. *Lewis*, 473 F.2d 561 (7th Cir. 1972), *cert. denied*, 410 U.S. 928, 943 (1973), as involving narrower matters. But the patronage abuses this Court considered in those cases included not only one of the very specific practices alleged here, threat of job loss for political reasons, but the broad range of "public benefits" whose "selective award" incumbents use to keep themselves in office, *Illinois State Employees Union*, 473 F.2d at 576—such benefits as "government contracts" or "improved public services," *Elrod*, 427 U.S. at 353. If, as this Court declared in *Branti*, —— U.S. at —— n. 12, the "distribution of [such] other public benefits, must be justified by a governmental purpose," it cannot be "imprudent" for a court to demand that such benefits not be distributed for the purpose of securing the incumbent's perpetuation in office.

4. Finally respondents seek to deny the continued validity and vitality of the holding granting standing in *Shakman* v. *Democratic Organization of Cook County*, 435 F.2d 267 (7th Cir. 1970),[9] applied again only last year, 481 F. Supp. 1315 (N.D. Ill. 1979), which they

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[6] *Id.*; Carter-Mondale Opp. at 7.

[7] Fed. Respondents' Opp. at 4 (emphasis added).

[8] Fed. Respondents' Opp. at 6; Carter-Mondale Opp. at 8-9.

[9] Fed. Respondents' Opp. at 7; Carter-Mondale Opp. at 10.

cannot deny is squarely in conflict with the decision below. They rely on *Mulqueeny* v. *National Commission on the Observance of International Women's Year*, 549 F.2d 1115 (7th Cir. 1977). In a bald attempt to mislead the Court respondents ignore that *Mulqueeny*—unlike *Shakman* and unlike this case—of course did not involve the vote, and more important, alleged only a claim by implication from a federal statute—not the vital First Amendment and Equal Protection rights recognized in *Shakman* and tossed aside by the lower courts here. So, for obvious reasons—as respondents also ignore—*Mulqueeny* never even mentioned, much less overruled, *Shakman* in the Seventh Circuit.

5. Only this Court stands between respondents and the destruction of precious irreplaceable political rights. This case does not involve Senator Kennedy's victory or defeat. It involves the rights of these petitioners to advance their political beliefs free of the overwhelming weight on the opposite side—the incumbent's side—of lawlessly applied federal money and federal power.

Respectfully submitted,

JOSEPH L. RAUH, JR.
JOHN SILARD
RAUH, SILARD & LICHTMAN
1001 Connecticut Avenue, N.W.
Suite 410
Washington, D.C. 20036
202/331-1795

WILLIAM A. DOBROVIR
ERWIN CHEMERINSKY
2005 L Street, N.W.
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202/785-8919

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Attorneys for Petitioners